

Remarks

This Amendment and Response is filed in response to the Office Action dated July 21, 2009. Filed concurrently herewith is a petition for a three-month extension of time extending the period of response up to and including January 21, 2010.

Claims 1-7 and 9-11 were pending in the application, with claims 1, 2 and 3 being independent claims. In brief review, the Examiner rejected claims 1-7 and 9-11 as allegedly being directed to non-statutory subject matter under 35 U.S.C. § 101; rejected claims 1-7 and 9-11 as allegedly obvious under 35 U.S.C. 103(a) over alleged "admitted prior art" (hereinafter "alleged admitted prior art") in view of CableScope's Media Math based on 2000 Nielsen Media Research (hereinafter "MediaMath"). The Examiner also cites U.S. Patent No. 7,039,931 to Whymark (hereinafter "Whymark") (see, e.g., pages 6 and 9 of Office Action) and also cites pages 12-20 of a May 2003 article by Glen Szxyzpka et al. entitled "The Adaptation and Use of Nielsen Media Research Commercial Ratings Data to Measure Potential Exposure to Televised Smoking-Related Advertisements" (hereinafter the "Szxyzpka article") (see, e.g., page 7 of Office Action).

By this Amendment, claims 1 and 3 have been amended. Reconsideration of the pending claims and application is respectfully requested.

Response to Section 101 Rejection

The Examiner rejected claims 1-7 and 9-11 as allegedly being directed to non-statutory subject matter under Section 101. Specifically, the Examiner argues at page 3 of the Office Action that claims 1-7 and 9-11 "recite a series of data structures, and calculations on numbers, which as recited, are broad enough that the claims could be completely preformed mentally, verbally, or without a machine nor is any transformation apparent." (emphasis added). The

Examiner also argues at page 4 that the "database" recited in the claim could be a "phone book" or "published Nielsen ratings books" and that one could "select a few numbers and mentally arrive at the applicant [sic] claims as tangible." The Examiner also references the January 7, 2009 memo from Deputy Commissioner John J. Love.

Applicant respectfully traverses this rejection. First, as amended, independent claims 1 and 3 have been amended to recite "an electronic database." Support for such amendment is found, for instance, at paragraph [0026] of the application as originally filed, which states:

"This conversion into an electronically readable format is the first part of the processing. The second and final part of the processing involves uploading the data from the affidavits (e.g., the date, day, time, zone, and network on which the spot aired) into a database and creating individual records for each local spot for later retrieval and analysis." (emphasis added).

It is also noted that claim 2 recites "obtaining, in electronic format, a database." The claims recite an electronic database and the processes of the present invention transform the data in the electronic database. And in this sense, the amended claims recite limitations that cannot be performed "mentally" or "verbally" as argued by the Examiner.

It is believed the claims recite sufficient transformation to satisfy the In re Bilski test for patentable subject matter under 35 U.S.C. §101. In the Bilski decision, the Court stated that "a claimed process is patent-eligible if it transforms an article into a different state or thing" and further that transformation of "specific data" that represents physical, tangible objects can be patent-eligible subject matter. In re Bilski, 545 F.3d 943, 962-963 (Fed. Cir. 2008). The Court noted that the "raw materials of many information-age processes . . . are electronic signals and electronically-manipulated data." Id. at 962.

It is not required that the underlying physical object that the data represents be transformed. Id. at 963. Moreover, it is "irrelevant that any individual step or limitation of such processes by itself would be unpatentable under § 101." Id. at 958.

For instance, claim 1 recites in part "determining a household universe for the data comprising the total number of households that subscribe to the network and storing the household universe in the electronic database." Claim 1 also recites "calculating household delivery for a specific spot by multiplying the network household delivery and the universe conformance factor and storing the household delivery data in the electronic database." Claim 1 also recites "calculating the spot's demo delivery by multiplying the network demo delivery by the universe conformance factor and storing the demo delivery number in the electronic database." Hence, for at least these reasons, claim 1 recites a process that transforms specific data using an electronic database into national equivalent units, and this data represents tangible objects in compliance with Section 101 and the Bilski decision.

Independent claim 2 relates to the transformation of data representing local spots into "national equivalent units." Claim 2 recites "obtaining, in electronic format, a database comprising data correlated to the airing of the local spots." (emphasis added). Claim 2 recites in part "obtaining national viewing data for the network in increments of less than one hour corresponding to each time the local spot aired and uploading said data into said database." Claim 2 also recites "sorting the database by one or more of advertiser, length of spot, network, daypart, and ISCI Code." Claim 2 also recites "aggregating the audience values to create a national equivalent unit on the network." For at least these reasons, claim 2 recites a process that transforms specific data into national equivalent units, and this data represents tangible objects in compliance with Section 101 and the Bilski decision.

Independent claim 3 and dependent claims 4-7 and 9-11 relate to transforming data representing local commercial spot inventory into "national equivalent units." Claim 3 recites "determining an impression delivery for the local spots aired based on viewing data in increments of less than one hour from a national audience measurement and matching the impression delivery data with the information from the processed affidavits as a record in an electronic database." Claim 3 also recites "comparing an estimated delivery derived from data in the electronic database with the actual delivery to determine the value of the national equivalent unit." For at least these reasons, claims 3-7 and 9-11 recite a process that transforms specific data into national equivalent units, and this data represents tangible objects in compliance with Section 101 and the Bilski decision.

In light of the legal standard, claims 1-7 and 9-11 are believed to comply with Section 101, and it is respectfully requested that this rejection be withdrawn.

Response to Section 103 Rejection

The Examiner rejected claims 1-7 and 9-11 as allegedly obvious under 35 U.S.C. 103(a) over "alleged admitted prior art" in view of "MediaMath". The Examiner also cites the Whymark patent and the Szczyepka article in the obviousness rejection. These rejections are respectfully traversed.

First, the MediaMath reference (which references Nielsen Media Research) is not understood to disclose the formation of "national equivalent units" related to local commercial advertising spots. While the MediaMath reference has a number of different calculations, none are understood to relate to "national equivalent units" or local commercial advertising spots as recited in independent claims 1, 2 and 3. The Examiner argues at page 5 of the Office Action that these national equivalents units are allegedly "linear extrapolations of local spot impressions" and that "Applicant arrives at this calculation the same way Nielsen aggregates

impressions for a particular advertisement or program over a period of time, or a population of viewers." The Examiner cites Nielsen's GRP (gross rating points) calculations or IMP (gross impressions) calculations.

This rejection is respectfully traversed. First, the national equivalent units recited in the claim are created using various embodiments of multi-step processes as recited in claims 1, 2 and 3 that are not completely shown in the GRP or IMP calculations. For the Examiner to simply reject the formation of national equivalent units recited in the claims as an alleged "extrapolation" ignores the steps recited in each of the independent claims. Such a rejection is not believed to be a proper 103 rejection.

Second, as to the alleged admitted prior art, the Applicant respectfully re-iterates its traversal of the Examiner's characterization of the statements made in paragraphs [0025] and [0028] of the "Detailed Description of the Invention" as "admitted prior art." While these paragraphs acknowledge the *availability* of electronic affidavits and Nielsen's CMIT database, it is respectfully pointed out that the manner in which embodiments of the invention use these electronic affidavits and CMIT databases – in combination with the other operations recited in the independent claims – is novel and unique. The Examiner responds at page 6 of the Office Action that paragraphs [0025] and [0028] are allegedly "admissions of the state of the art by the applicant and are used only to meet the limitations recited in claim [sic]." Applicant respectfully points out that the elements of the claims as a whole have not been shown to be present in combination in the prior art.

Third, as to the Whymark patent cited by the Examiner, at page 6 of the Office Action the Examiner agrees this patent does not relate to forming "national equivalent unit." The Examiner cites Whymark as alleged "motivation by the industry to accurately measure and price advertising rates, time, and audience impressions . . . [and] [t]his motivation is in line with

applicant's stated motivation in the applicant's specification." This is respectfully traversed, because it is believed to be improper to reject as obvious claims reciting specific steps merely because there is an alleged motivation to "accurately measure and price advertising" – particularly where the Whymark patent teaches an entirely different manner that such accuracy is achieved. The mere fact Whymark is electronically detecting whether an advertisement actually ran in a scheduled time slot cannot reasonably be used to render unpatentable all inventions related to advertisement spots – particularly where independent claims 1, 2 and 3 recite specific operations not disclosed in Whymark, MediaMath or the alleged admitted prior art.

The Examiner also cites the Szxyzypka article on page 7 of the Office Action, and also argues at pages 8-9 of the Office Action that Whymark allegedly discloses the motivation for "ever more accurate accounting." These rejections are respectfully traversed because the cited prior art is not understood to disclose the operations recited in independent claims 1, 2, 3.

For instance, claim 1 recites in part "retrieving a specific household universe for at least that part of the network corresponding to the location in which a spot was broadcast from the database and storing the specific household universe in a record corresponding to a specific local spot in the database for later retrieval." The Examiner contends that a local spot population is a subset of global House Hold Population. This is respectfully traversed, because not all zones insert in all networks, and therefore, the local spot population is not typically a subset of global House Hold Population as asserted by the Examiner. For at least this reason, claim 1 is believed to be allowable.

Regarding independent claim 2, this claim recites in part "determining household impression and demo impression for the local spots based on the national viewing data" and as pointed out in paragraphs [0011]-[0012] of the Application, the prior art has used "daypart"

averages which are a broadly defined period of time such as "prime-time" – and not national viewing data "in increments of less than one hour" as recited in claim 2. For at least these reasons, claim 2 is believed to be allowable.

Regarding independent claim 3, this claim recites in part "determining an impression delivery for the local spots aired based on viewing data in increments of less than one hour from a national audience measurement and matching the impression delivery data with the information from the processed affidavits as a record in a database." The Examiner states that Nielsen's CMIT database contains data on a quarter hour basis and that this operation is allegedly "notoriously well known." As discussed above and in paragraphs [0011]-[0012] of the Application, the prior art has used "daypart" averages which are a broadly defined period of time such as "prime-time" – and not national viewing data "in increments of less than one hour" as recited in claim 3.

For at least these reasons, claims 1-3 are believed to be allowable, as well as dependent claims 4-7 and 9-11 which depend from independent claim 3.

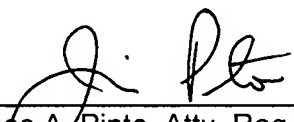
Conclusion

The application and claims are believed to be in condition for allowance. No additional fees are due beyond the extension fee submitted herewith. Should the Examiner have any questions, please contact the undersigned attorney at 303-223-1195.

Respectfully submitted,

Date: January 21, 2010

By:



James A. Pinto, Atty. Reg. No. 40,774
Brownstein Hyatt Farber Schreck, LLP
Customer No. 60879

11537\13\1355099.1